UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA, **Plaintiff,** **v.** **TIMOTHY E. BAGEANT,** **Defendant.**	**CASE NO. 2:16-CR-090** **CHIEF JUDGE SARGUS**

GOVERNMENT'S SENTENCING MEMORANDUM

The United States, by and through the undersigned counsel, respectfully submits its Sentencing Memorandum in connection with the sentencing of Defendant Timothy E. Bageant. For the following reasons, the United States submits that a sentence within the applicable guidelines range of 78–97 months is reasonable and appropriate in this case.

1. BACKGROUND

On May 5, 2016, the defendant, Timothy E. Bageant, entered a plea of guilty, pursuant to a plea agreement, to Count 1 of an Information charging him with knowingly possessing visual depictions of child pornography in interstate commerce, in violation of 18 U.S.C. § 2252(a)(4)(B). After agents executed a search warrant his residence on September 2, 2015, the defendant admitted to utilizing a website known to facilitate the trade of child pornography to download visual depictions of minors engaged in sexually explicit conduct and that he possessed hundreds of such images and videos on his computer devices.

The Probation Office released the final Presentence Investigation Report ("PSR") on July 12, 2016. Sentencing in this matter is scheduled for April 6, 2017.

2. ARGUMENT

After *Booker v. United States*, district courts should engage in a three-step sentencing procedure. 543 U.S. 220 (2005). Courts are to first determine the applicable guidelines range, then consider whether a departure from that range is appropriate, and finally, consider the applicable guidelines range—along with all of the factors listed in 18 U.S.C. § 3553(a)—to determine the sentence to impose. The central command to district courts in imposing a sentence is to fashion one that is sufficient, but not greater than necessary, to meet the goals set forth in 18 U.S.C. § 3553(a).

Here, the Probation Officer correctly calculated that the defendant's offense level is 28 and his criminal history category is I. The Probation Officer further correctly noted that these calculations result in an advisory guidelines range of 78–97 months imprisonment, a term of supervised release of 5 years to life, and a fine of $12,500–$125,000. The Probation Officer's recommended sentence is 78 months imprisonment, followed by a 5-year term of supervised release, and no fine.

There are no unresolved objections to the PSR. The Government concurs with the applicable guidelines range calculated by the Probation Officer in this case and submits that a sentence within the applicable guidelines range of 78–97 months is reasonable and appropriate in this case. An analysis of the most pertinent 18 U.S.C. § 3553(a) factors demonstrates that a sentence within the range of 78–97 months is sufficient, but not greater than necessary, to achieve the statutory goals of sentencing.

The Nature and Circumstances of the Offense. The discovery of the defendant's offense was the result of law enforcement's investigation of various Internet Protocol ("IP") addresses involved in sharing child pornography. A search warrant was executed at the residence of the subscribed IP address on September 2, 2015, where the defendant was residing. The defendant admitted to utilizing a website known to facilitate the trade of child pornography to download visual depictions of minors engaged in sexually explicit conduct and that he possessed hundreds of such images and videos on his computer devices. A forensic examination revealed that the defendant's computer devices held over 14,500 images and videos of child pornography. The images depicted pre-pubescent females, approximate 1–12 years old, nude or partially nude with focal points on the genitals, as well as sexual abuse of pre-pubescent females approximately 1–12 years old with vaginal penetration by a penis, foreign object, or finger. When law enforcement officers submitted the recovered child pornography files to the National Center for Missing and Exploited Children, it was determined that at least 76 identified child victims were depicted.

As the facts show, the nature and circumstances of the offense in this case are atrocious. Crimes of this nature exacerbate the sexual victimization of the most vulnerable members of our society. Congress has recognized that these crimes have "a deleterious effect on all children by encouraging a societal perception of children as sexual objects" and lead to "further sexual abuse and exploitation." Child Pornography Prevention Act of 1996, § 121(1), 18 U.S.C. § 2551 (1996). This is not a victimless crime, but one that infinitely perpetuates the pain and suffering of the children that were abused to produce the images that the defendant and others like him seek for their own prurient interests. This pain is reflected all too clearly in the victim impact statements that were submitted by the identified victims in this case. The defendant's crime falls within a category of offenses which inflict very real and serious harm on the numerous victims involved. The Government thus submits that the nature and circumstances of the offense in this case weighs in favor of a lengthy term of incarceration.

The History and Characteristics of the Defendant. The defendant reported to having a good childhood that was free of any type of abuse or neglect. (PSR, at ¶ 47.) He stated that he is close with his wife and children. (PSR, at ¶ 49.) The defendant has maintained steady employment for most of his adult life. He is currently employed full-time. (PSR, at ¶ 60.) He denied ever being diagnosed with any type of mental health issues or suffering from any substance abuse problems. (PSR, at ¶¶ 55–57.) He has no prior criminal history of any kind. (PSR, at ¶¶ 44–46.)

In sum, it does not appear that the defendant has suffered from any traumas or difficulties that offset other aspects that call for a more significant sentence. There is no background or characteristic that justify any mitigation of his offense. The defendant sought, accessed, viewed, and took pleasure in images that depicted the rape or attempted rape of young children. The Government thus submits that the weighing of the nature of this offense against the defendant's history and background warrants a lengthy term of incarceration.

The Statutory Purposes of § 3553(a). The Court must also consider the need for the sentence imposed "to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense." 18 U.S.C. § 3553(a)(2)(A). A significant term of incarceration is necessary to accomplish all of these purposes in this case. As discussed above, Congress determined that all crimes involving the sexual exploitation of children—including the possession of child pornography—are serious offenses, and thus provided that lengthy incarceration and supervised release terms may be imposed upon conviction. The seriousness with which Congress views these offenses is demonstrated by its continual review and amendment of the relevant statutes. When it enacted the Child Pornography Prevention Act of 1996, Congress cited numerous bases for amending the exiting child pornography laws and creating harsher statutory penalties for them. Congress specifically found that "the elimination of child pornography and the protection of children from sexual exploitation provide a compelling governmental interest for prohibiting production, distribution, possession, sale, or viewing of visual depictions of children engaging in sexually explicit conduct." Child Pornography Prevention Act of 1996, § 121(1), 18 U.S.C. § 2551 (1996). Congress further found that the various harms to exploited children and the public supported amendment of the child pornography laws, making specific findings that:

> (1) the use of children in the production of sexually explicit material . . . is a form of sexual abuse which can result in physical or psychological harm, or both, to the children involved;
>
> (2) child pornography permanently records the victim's abuse, and its continued existence causes the child victims of sexual abuse continuing harm by haunting those children in future years.

Id. The Supreme Court has also recognized the compelling state interest in punishing those who further the harm of child victims of sexual abuse by consuming child pornography depictions:

> 'It is evident beyond the need for elaboration that a State's interest in safeguarding the physical and psychological well-being of a minor is compelling. . . . The legislative judgment, as well as the judgment found in relevant literature, is that the use of children as subjects of pornographic material is harmful to the physiological, emotional and mental health of the child.'. . . It is also surely reasonable for the State to conclude that it will decrease the production of child pornography if it penalizes those who possess and view the product, thereby decreasing demand. . . . the materials produced by child pornographers permanently record the victim's abuse. The pornography's continued existence causes the child victims harm by haunting the children in years to come.

Osborne v. Ohio, 495 U.S. 103, 110–11 (1990) (quoting *New York v. Ferber*, 458 U.S. 747, 746–58 (1982) (internal citations omitted)). The findings of Congress and the Supreme Court regarding the harms inflicted by child pornography and sexual exploitation offenses reflect the seriousness of the offense in this case. The Government thus submits that only a sentence incorporating a significant term of incarceration will properly reflect such seriousness and promote respect for the laws that prohibit all offenses involving the exploitation of children.

The Need to Afford Adequate Deterrence to Criminal Conduct. The Court must also consider the need for the sentence imposed "to afford adequate deterrence to criminal conduct." 18 U.S.C. § 3553(a)(2)(B). Deterrence includes (1) specific deterrence: the deterrence of the defendant in the instant case; and (2) general deterrence: those who may consider similar offenses in the future. The Government submits that a lengthy term of incarceration is an important specific and general deterrence measure in this case. The risk of recidivism that Congress found to be of particular concern in child sex offense cases supports the imposition of a significant term of incarceration here. *See, e.g., United States v. Pugh*, 515 F.3d 1179, 1194 (11th Cir. 2008) (referring to Congress's longstanding concern with recidivism in child sex offender cases).

The Government further hopes that a lengthy sentence of incarceration in this case will serve as a general deterrent to others from committing similar offenses. The deterrence of child pornography offenses is paramount to the goal of decreasing the demand for child pornography and thus reducing the number of innocent children being subjected to sexual exploitation. Courts have recognized the importance of utilizing sentencing as a means of general deterrence to potential child pornography offenders. The Seventh Circuit aptly stated:

> Young children were raped in order to enable the production of the pornography that the defendant both downloaded and uploaded—both consumed himself and disseminated to others. The greater the customer demand for child pornography, the more that will be produced. Sentences influence behavior, or so at least Congress thought when in 18 U.S.C. § 3553(a) it made deterrence a statutory sentencing factor. The logic of deterrence suggests that the lighter the punishment for downloading and uploading child pornography, the greater the customer demand for it and so the more will be produced.

United States v. Goldberg, 491 F.3d 668, 672 (7th Cir.) (citations omitted), *cert. denied*, 552 U.S. 1041 (2007); *see also United States v. Goff*, 501 F.3d 250, 260 (recognizing that "the consumer of child pornography 'creates a market' for the abuse by providing an economic motive for creating and distributing the materials"). The Government thus suggests that a significant term of incarceration in this case will not only serve the goal of deterring the distribution of child pornography, but will also eventually lead to a lessening of the production of these images and reduction of the sexual abuse of children.

The Need to Protect the Public. The Court must also consider the need for the sentence imposed "to protect the public from further crimes of the defendant." 18 U.S.C. § 3553(a)(2)(C). Due to the harm inherent in the nature of the defendant's offense, the Government submits that there is a need to protect the public in this case. Those who seek out and take pleasure in watching the sexual abuse of children present a danger to all children. The images and videos that the defendant downloaded, viewed, and shared involved real children suffering genuine abuse. The defendant's involvement in the ongoing exchange of these horrific images is a threat to public safety for two reasons: (1) his actions contributed to the demand for child pornography; and (2) his actions perpetuate the abuse of existing victims and thus leads to the abuse of additional victims.

Furthermore, during the search warrant execution at his residence in September 2014, the defendant advised agents that he has a sexual interest in prepubescent females and that he has had this interest since he was approximately eighteen years old. A forensic examination revealed that the defendant's computer devices held over 14,500 images and videos of child pornography, creation dates of which ranged from March 19, 1997 to March 2, 2015—nearly twenty years.

The defendant's long-term involvement in the trade of child pornography demonstrates an ongoing deviant sexual interest in children, which unquestionably presents a danger to the most vulnerable members of our society. A significant term of incarceration is therefore necessary to protect the public and those vulnerable children from the defendant's entrenched involvement in the sexual exploitation of children.

The Need to Provide Training, Medical Care, or Other Correctional Treatment. The Court must also consider the need for the sentence imposed "to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner." 18 U.S.C. § 3553(a)(2)(D). In light of the nature of the offense and defendant's history and characteristics, the Government suggests that sex offender treatment would be beneficial. The Government recommends that the defendant be placed in a facility that may provide these treatment options.

There are currently eight Bureau of Prison ("BOP") facilities that offer the Sex Offender Management Program ("SOMP") or the Sex Offender Treatment Program ("SOTP"). The only high-intensity residential program ("SOTP-R") is located in FMC Devens, Massachusetts. The BOP has five moderate-intensity sex offender treatment programs ("SOTP-NR") at various security levels: USP Tuscon, Arizona (high); FCI Marianna, Florida; USP Marion, Illinois; FCI Petersburg, Virginia (all medium); Seagoville, Texas; FCI Englewood, Colorado; and FSL Elkton, Ohio (all low). The Government believes that the completion of either the SOMP or SOTP by the defendant will serve the goals of treatment and urges the Court to recommend placement at a facility that offers such programs.

The Need to Provide Restitution. Finally, "in determining the particular sentence to be imposed," the Court must consider "the need to provide restitution to any victims of the offense." 18 U.S.C. § 3553(a)(7). The Government has received five requests for restitution from the minor victims portrayed in the following child pornography series, as images from these series were found on the defendant's computer devices. The attorneys for these victims have agreed to settle for the following amounts:

1. “Lighthouse” series - $31,500 request / attorney has agreed to settle for $1,500;
2. “TightsNGold” series - $25,000 request / attorney has agreed to settle for $2,000;
3. “Marineland” series – attorney has agreed to settle to $3,000;
4. “Vicky” series – attorney has agreed to $1,500; and
5. “Sweet Sugar” series – attorney has agreed to $5,000.

The Government has discussed these restitution requests with counsel for both the defendant and the victims, and hopes to submit a proposed Agreed Order for approval by the Court prior to sentencing.

3. CONCLUSION

For the foregoing reasons, the Government respectfully submits that a sentence within the applicable guidelines range of 78–97 months would be sufficient, but not greater than necessary, to achieve the statutory goals of sentencing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Government's Sentencing Memorandum was served this 30th day of March 2017, electronically upon all counsel of record.

s/Jessica H. Kim
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